

Chapter 3-Personnel, Training and Employee Relations

Article 22-Employee Discipline

Effective January 2006

33030.1 Policy

All disciplinary action shall be imposed in a fair, objective, and impartial manner, and the California Department of Corrections and Rehabilitation (Department) shall consistently apply accepted principles of due process and progressive discipline when corrective or adverse action is imposed.

33030.2 Purpose

To ensure effective and efficient departmental operations and employee adherence to reasonable and acceptable rules of conduct and performance.

33030.3 Employee Performance Standards

33030.3.1 Code of Conduct

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Appreciate differences in people, their ideas, and opinions;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;
- Respect the rights of others and treat them fairly regardless of race, color, national origin, ancestry, gender, religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation;
- Comply with all applicable laws and regulations;
- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.

33030.3.2 General Qualifications

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), title 2, section 172, General Qualifications, which states, in pertinent part, the following:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

33030.3.3 Law Enforcement Code of Ethics

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.

I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, organizational associations or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

Confidential information received in my official capacity shall remain undisclosed unless disclosure is necessary in the performance of my duty. I will never engage in acts of corruption, bribery, insubordination or the obstruction of justice, nor will I condone such acts by other peace officers. I will immediately report acts of misconduct by staff of my department and cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession... law enforcement.

33030.4 Definitions

Adverse Action - A documented action, which is punitive in nature and is intended to correct misconduct or poor performance or which terminates employment.

Affected Employee - An individual who is the subject of adverse action.

Appointing Power - The Secretary of the Department.

Assistant General Counsel (AGC) - An individual responsible for managing the Employment Advocacy and Prosecution Team (EAPT) in the Department's Office of Legal Affairs.

Bureau of Independent Review (BIR) – A unit within the Office of the Inspector General responsible for contemporaneous public oversight of the Department's investigative and disciplinary processes.

Charging Package (Also known as the “Skelly package”) – All documentation used to substantiate the charges in the action and which is presented to the employee with the Preliminary or Final Notice of Adverse Action. This material may include but is not limited to the following: the investigative report; applicable policies, procedures, and Government Code sections; records of training the employee has attended; job descriptions; and duty statements and/or post orders that are related to the charges. This package does not include the CDCR Form 402, Hiring Authority Review of Investigation, and CDCR Form 403, Justification of Penalty.

Chief Assistant Inspector General (CAIG) – An individual responsible for the operation and functions of the BIR.

Corrective Action - A documented non-adverse action (verbal counseling, in-service training, on-the-job training, written counseling, or a letter of instruction) taken by a supervisor to assist an employee in improving his/her work performance, behavior, or conduct.

Designated Cases – Those cases assigned to the Vertical Advocates, including matters involving staff integrity and/or dishonesty, abuse of authority, sexual misconduct, use of force in which an inmate suffers death or serious injury, use of deadly force, serious allegations made against supervisors, and high profile or dismissal cases assigned to the Vertical Advocate by the AGC.

Employee Counseling Record - A written record of counseling, documented on a CDC Form 1123, between a supervisor and subordinate which provides formal instruction about laws, rules, policies and employer expectations.

Employee Relations Officer (ERO)/Disciplinary Officer – An employee designated by the Hiring Authority to coordinate adverse actions.

Employment Advocacy and Prosecution Team (EAPT) - The team, formerly known as the Employment Law Unit, responsible for operation of the Vertical Advocacy Model in the Department's Office of Legal Affairs.

Executive Review – A secondary, management-level review conducted to resolve a significant disagreement(s) regarding an investigative finding, proposed disciplinary penalty, or settlement agreement.

Hiring Authority – The Undersecretary or General Counsel or any Chief Deputy Secretary, Executive Officer, Chief Information Officer, Assistant Secretary, Director, Deputy Director, Associate Director, Warden, Superintendent, Health Care Manager, Regional Health Care Administrator, or Regional Parole Administrator authorized by the appointing power to hire, discipline, and dismiss staff under his/her signature authority. The Administrator at the Richard A. McGee Correctional Training Center shall serve as the Hiring Authority for Correctional Officer Cadets. The appointing power is a hiring authority, for purposes of this Article.

In-Service Training (IST) - Formal training conducted departmentally and/or at the direction of the Hiring Authority and usually conducted away from the employee's work site.

Letter of Instruction (LOI) - A written document, which outlines requirements for an employee to advance his/her job performance or conduct to an acceptable level.

Notice of Adverse Action - Notification to the affected employee of the charges against him/her, the adverse action penalty, and the effective date.

Office of Internal Affairs (OIA) - The entity within the Department with authority to investigate allegations of employee misconduct.

On the Job Training (OJT) - Training conducted by a supervisor (or a designated employee with the required expertise under the direction of a supervisor) at the job site while the employee is working.

Preliminary Notice of Adverse Action – Notification required of some Hiring Authorities in accordance with the Bodiford Settlement Agreement, to an affected employee regarding charges against him/her and the intent to impose adverse action. This notification summarizes the specific subsections of the Government Code that have been violated, as well as the actions that constituted the violation. For Hiring Authorities mandated to serve a Preliminary Notice of Adverse Action, the charging package shall also be served with this notice.

Senior and Special Assistant Inspectors General (SAIG) – Attorneys employed by the BIR who report to the CAIG.

Skelly Hearing - An informal proceeding in which the employee, together with his or her representative, is provided a predeprivation opportunity to respond to management regarding the charges in the Notice of Adverse Action. The employee may present any arguments for amending a pending adverse action before the action becomes effective. *Skelly* Hearings are required at the request of the affected employee for the following: adverse actions; rejections during probation; non-punitive actions resulting in the employee's dismissal or demotion; and transfers for purposes of punishment and/or in conjunction with an adverse action.

Skelly Letter – A document transmitted to an affected employee, following the *Skelly* Hearing, stating the Hiring Authority's final decision regarding the imposition of a disciplinary penalty.

Skelly Officer - A noninvolved manager, usually at the level of a Correctional Administrator, who will make a recommendation to the Hiring Authority after a *Skelly* Hearing to amend, modify, withdraw, or sustain the pending adverse action. The *Skelly* Officer must be a management employee above the organizational level of the disciplined employee's supervisor unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond. Unless the affected employee waives his/her right to have a noninvolved manager serve as the *Skelly* Officer, the *Skelly* Officer shall not be the person who completed the CDCR Form 989, Internal Affairs Investigation Request; who signed the employee's Notice of Adverse Action; or who participated in the decision to take adverse action.

Summary of Adverse Action – A summary compiled by the ERO/Disciplinary Officer of allegations of misconduct, from the evidence contained in an investigative report and other documents.

Vertical Advocacy Model – A system that ensures legal representation for the Department during the entire investigative and employee disciplinary process in order to hold staff accountable for misconduct by way of thorough and complete internal investigations, principled decision-making and assessment of the investigations, and consistent and appropriate discipline.

Vertical Advocate – An EAPT attorney assigned to one or more specific Hiring Authority locations to consult with the investigators and Hiring Authorities concerning investigative findings, disciplinary decisions, and to prosecute designated cases.

33030.5 Responsibility

33030.5.1 Appointing Power

The appointing power shall ensure implementation and compliance with the Department's employee discipline policy and programs.

33030.5.2 Hiring Authority

Each Hiring Authority shall be responsible for the following:

- Taking adverse action whenever warranted by an employee's behavior/conduct;
- Ensuring adverse actions are imposed in a fair, objective, and impartial manner and are consistent with this policy, the principles of just cause, and due process;
- Submitting CDCR Forms 989 to the OIA including those cases in which direct adverse action is taken without an investigation;
- Reviewing investigative reports, determining investigative findings, and completing CDCR Form 402;
- Determining and justifying appropriate penalty level for employee misconduct by utilizing the Employee Disciplinary Matrix and completing the CDCR Form 403;
- Executing and causing the Notice of Adverse Action to be served on employees;
- Consulting with the Vertical Advocate, for designated cases, and the SAIG for cases the BIR is monitoring, regarding sufficiency of investigations and appropriateness of penalty;
- Consulting with the Vertical Advocate, for designated cases, and the SAIG for cases the BIR is monitoring, before agreeing to any modification, stipulation, or withdrawal affecting the proposed action and before approving any settlement agreement;
- Participating in Executive Review, as necessary, and forwarding material, as appropriate, for Executive Review;
- Informing the Vertical Advocate, for designated cases, and the SAIG, for cases the BIR is monitoring, of any new case developments.

Each Chief Deputy Secretary, shall be responsible for the following:

- Participating in Executive Review, as necessary;
- Coordinating with the CAIG and the AGC on matters referred for Executive Review;
- Elevating high-profile cases to the Secretary and Undersecretary, as necessary.

The Chief Information Officer and General Counsel and each Assistant Secretary, Executive Officer, Director, Deputy Director, and Associate Director, shall be responsible for the following:

- Facilitating and participating in Executive Review, as necessary;
- Coordinating with the CAIG and the AGC on matters referred for Executive Review;
- Coordinating with and informing the appropriate Chief Deputy Secretary, Undersecretary, or Secretary regarding high-profile cases being monitored by the BIR and especially for cases where there is significant disagreement regarding a penalty level and/or settlement agreement;
- Approving requests for Administrative Time Off (ATO);
- Elevating cases to the appropriate Chief Deputy Secretary, Undersecretary, and Secretary, as necessary.

33030.5.3 Supervisors and Managers

Each supervisor and manager shall be responsible for the following:

- Supervising the performance, behavior, and conduct of subordinate staff and imposing corrective action as necessary;
- Filing documentation related to corrective action in the employee's supervisory file;
- Reviewing the employee's supervisory file for documentation of any corrective actions for similar misconduct occurring within one (1) year, prior to the imposition of corrective or adverse action;
- Referring alleged misconduct and requests for investigation or adverse action to the Hiring Authority immediately following discovery of facts which may constitute misconduct;
- Serving as a *Skelly* Officer, as necessary.

33030.5.4 ERO/Disciplinary Officer

The ERO/Disciplinary Officer shall be responsible for the following:

- Monitoring and coordinating the adverse action processes;
- Drafting Notices of Adverse Action, in consultation with the Vertical Advocate for all non-designated cases;
- Arranging for proper service and review of adverse action documentation;
- Providing a copy of the declaration of service and serving all adverse actions to affected employees;

- Assisting the Vertical Advocates in hearing preparation for designated cases , including service of subpoenas on witnesses;
- Scheduling and attending *Skelly* Hearings and assisting the *Skelly* Officer with administrative duties as requested;
- Representing the Hiring Authority in all non-designated cases and supporting the Vertical Advocate in all designated cases before the State Personnel Board (SPB);
- Coordinating with the Hiring Authority, Vertical Advocate, SPB representatives, affected employees and employee representatives, and other individuals and entities as appropriate;
- Maintaining an accurate log of all formal discipline served and providing copies of the log and all documents relevant to pending actions quarterly to the Office of Personnel Services Employee Discipline Unit;
- Maintaining an accurate log of all contacts by employees at the worksites (for which the ERO/Disciplinary Officer is responsible) regarding contacts about potential testimony and subpoenas the employee has received;
- Retaining adverse action documentation, including CDCR Forms 403, in the Adverse Action File.

33030.5.5 Vertical Advocate

The Vertical Advocate shall be responsible for the following:

- Monitoring and coordinating the adverse action process for all designated cases, from the onset of an investigation;
- Calculating statute of limitations expiration dates;
- Consulting with and advising the Hiring Authority and ERO/Disciplinary Officer on all cases, as requested by the Hiring Authority;
- Providing legal consultation for all designated cases to the assigned investigator, including developing the investigative plan, preparation of investigative interviews, and attending investigative interviews as appropriate to assess witness demeanor and credibility;
- Providing legal consultation to the Hiring Authority on all designated cases and coordinating with the SAIG, for cases the BIR is monitoring, regarding application of the Disciplinary Matrix to determine the appropriate penalty;
- Drafting Notices of Adverse Action (in consultation with the ERO/Disciplinary Officer and the SAIG) for all designated cases;
- Participating in Executive Review, as necessary;
- Attending *Skelly* Hearings for all designated cases;
- Representing the Department for designated cases in disciplinary matters before the SPB;
- Drafting settlement agreements for all designated cases;
- Assisting the Hiring Authority and ERO/Disciplinary Officer in drafting settlement agreements and reviewing the form and substance of each proposed settlement

agreement drafted by the Hiring Authority and/or the ERO/Disciplinary Officer, prior to the Hiring Authority entering into any settlement;

- Coordinating with the SAIG, for cases the BIR is monitoring, at each step of the investigative and disciplinary process;
- Coordinating with the Hiring Authority, SPB representatives, and other individuals and entities as appropriate;
- Maintaining accurate records of assignments and documenting in the legal database all communications with the Hiring Authority and SAIG regarding disciplinary penalties; the *Skelly* Hearing; the *Skelly* Officer's recommendation; the outcome of Executive Review; settlement agreements; SPB Hearings; and any appellate proceedings;
- Documenting in the legal page of the CMS all communications with the investigator, Hiring Authority, and SAIG regarding investigative reports and investigative findings.

33030.5.6 Office of Personnel Services, Human Resources

Personnel Services staff and/or local personnel staff shall be responsible for the following:

- Processing adverse actions as indicated by the Hiring Authority on the Notice of Adverse Action;
- Filing and retaining Final Notices of Adverse Action in employee official personnel files for three (3) years unless the retention period is reduced by the Hiring Authority after the *Skelly* Hearing or otherwise agreed to by stipulated settlement.

Office of Personnel Services, Employee Discipline Unit, staff shall be responsible for the following:

- Collecting and maintaining the official departmental copies of all adverse action documents separate and apart from those held in the Official Personnel files;
- Maintaining statistical information and generating reports on adverse actions using the Case Management System;
- Drafting adverse actions and representing the Department before the SPB for non-designated cases emanating from the Headquarters Offices and Divisions, Juvenile Justice Divisions, and all Parole Regional Offices.

33030.6 Managerial Employees

Supervisors or managers appointed after January 1, 1984, as a designated managerial employee, but who are not in a career executive category, are subject to the provisions in Government Code section 3513 et seq. (Ralph C. Dills Act). The managerial employee may be disciplined for any cause except for a cause constituting prohibited discrimination as found in Government Code sections 19700 through 19703.

33030.7 Peace Officer Procedural Bill of Rights

All employees designated by the Penal Code as peace officers, both probationary and permanent, are fully guaranteed their Peace Officer Procedural Bill of Rights (Government Code sections 3300 through 3311) during any adverse action procedure, including related interviews and investigations.

33030.8 Causes for Corrective Action

Not all inappropriate behavior will require the imposition of disciplinary action. In some cases, corrective action and documentation may be more appropriate and must generally be issued within thirty (30) calendar days of discovering inappropriate behavior or poor performance. [For use of force incidents, Letters of Instruction must generally be issued within thirty (30) days from when the Institution Executive Review Committee concludes its review of the incident.] The purpose of corrective action is to help an employee change problem behavior or performance before discipline is necessary and may be imposed for any employee conduct or performance that is correctable by means of counseling and/or training (up to and including a Letter of Instruction). Corrective action may precede adverse action or an adverse action penalty may include corrective action. For peace officers covered by the Bargaining Unit 6 Agreement, behaviors that resulted in corrective action may not be used as cause for adverse action but may be cited in an adverse action for subsequent violations to prove the employee knew about a statute, regulation, or procedure or to prove that the employee has engaged in a pattern of violating a statute, regulation, or procedure within the past year. Corrective actions may also be used to rebut the employee's claim that he/she did not know about a statute, regulation, or procedure and/or expectation.

33030.8.1 Types of Corrective Action

33030.8.1.1 In-Service Training (IST)

When IST is ordered, the supervisor or manager shall complete section one of the memorandum form "Order for Formal IST or Documentation of OJT." Orders for IST shall direct the employee to report to the IST Training Manager, Assistant IST Training Manager, or other departmental training officer for completion of specific IST by a specified date. When formal training is ordered, the employee is responsible to report to the appropriate Training Manager and complete the training prior to the due date set for the completion of the training. Orders for formal IST and completed IST documentation shall be filed in the employee's supervisory file.

33030.8.1.2 On the Job Training (OJT)

When OJT is ordered, the supervisor shall complete section two of the memorandum form "Order for Formal IST or Documentation of OJT" and shall complete the CDC Form 844, In-Service Training Sign-In Sheet. The employee shall be given the opportunity to sign the CDC Form 844 to indicate his or her participation in discussion and acknowledge receiving and understanding the training provided. Orders for OJT and completed OJT documentation shall be filed in the employee's supervisory file.

33030.8.1.3 Employee Counseling Record

The supervisor or manager shall meet with the employee and discuss his or her conduct or performance level and complete a CDC Form 1123, Employee Counseling Record. In the Action Plan section of the CDC Form 1123, the supervisor or manager shall indicate any training the supervisor or manager has provided to the employee or indicate training directed to the employee to attend, specifying the training the employee is required to complete and the length of time the employee is allowed to complete the training. The employee shall be given the opportunity to sign for a copy of the CDC Form 1123. Follow-up discussions with employees who receive a CDC Form 1123 shall occur and shall be documented and placed in the employee's supervisory file. The CDC Form 1123 shall be filed in the employee's supervisory file.

33030.8.1.4 Letters of Instruction

An LOI may not deprive employees of pay or benefits (e.g., removal from a position, loss of differential pay). The LOI shall be prepared on a memorandum and shall (1) state the expected performance standards to be met; (2) provide a plan to meet expected performance; and (3) indicate time frames to meet the expectation. The memorandum shall be as follows:

- Entitled "Letter of Instruction;"
- Clearly addressed to employee;
- Clearly state the nature and circumstances of the problem;
- Cite previous discussions with employee;
- Include an explanation of why the employee's conduct is considered inappropriate, and what conduct would have been appropriate;
- Clearly state exactly what standards of performance are expected from the employee;
- Include results of face-to-face discussion;
- Develop a plan and set a date, not to exceed one year, by which the employee is to meet the expected performance.

The LOI shall be signed by the supervisor and presented to the employee for his/her signature. A copy of the signed LOI shall be provided to the employee. The Hiring Authority shall sign the space "Approved for Placement in Personnel File." A copy of the LOI shall be forwarded to the ERO/Disciplinary Officer and to the local personnel office for placement in the employee's official personnel file and the employee's supervisory file.

Follow-up discussions with employees who receive an LOI shall occur and be documented and filed in the employee's supervisory file. [See *Otto v. Los Angeles Unified School District* (2001) 89 Cal. App. 4th 985]

33030.8.2 Initiating Corrective Action

The responsible supervisor/manager shall review the employee's supervisory file for documentation of any prior corrective actions for similar misconduct occurring within the past one (1) year. The one-year period runs from the date of issuance of the corrective action (e.g., LOI). Corrective actions that are beyond the one-year period shall not be considered in this review. If prior corrective actions exist, supervisors/managers shall review each corrective action to determine if referral for adverse action is more appropriate than issuance of another corrective action.

33030.8.3 Documentation Retention

- Orders for and documentation regarding completion of OJT and IST and CDC Forms 1123 shall be retained in the employee supervisory file for one (1) year from date of issuance.
- LOIs shall be retained in the employee's personnel and supervisory files for one (1) year from the time management should reasonably have known of the incident resulting in the LOI or once all of the requirements in the LOI have been met, whichever is earlier.
- The Hiring Authority may set forth certain conditions of performance to be completed by the employee for a specified period of time prior to consideration of the early removal of the document.
- If an employee submits a rebuttal to an LOI, the rebuttal shall be retained with the LOI in the employee's personnel file or the supervisory file.

33030.9 Causes for Adverse Action

Pursuant to Government Code section 19572, each of the following constitutes cause for discipline of an employee, or of a person whose name appears on any employment list:

- (a) Fraud in securing appointment.
- (b) Incompetency.
- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality.
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.
- (p) Misuse of state property.

- (q) Violation of this part or of a board rule.
- (r) Violation of the prohibitions set forth in accordance with section 19990.
- (s) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.
- (t) Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
- (v) The use during duty hours, for training or target practice, of any material that is not authorized for that use by the appointing power.
- (w) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of section 12940, as those bases are defined in sections 12926 and 12926.1, except as otherwise provided in section 12940, against the public or other employees while acting in the capacity of a state employee.
- (x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job.

33030.10 Employee Representation Rights

Employees with permanent or probationary status (regardless of time base) are entitled to representation at all stages of the adverse action process. This representation may be provided by the exclusive representative (union) for rank-and-file employees. For all non-represented employees, a personal advisor, attorney, or another state employee may attend the interview that may lead to adverse action. This is appropriate during *Skelly* or appeal hearings related to the adverse action. Employees who are possible subjects or witnesses in the investigation are excluded as employee representatives.

33030.10.1 Temporary Authorization (TAU) Appointments

Employees with TAU appointment status are not necessarily entitled to have a representative present during an interview which is preparatory to a separation from the TAU appointment. However, if a proposed action against an employee in this status is attributable to a specific incident that would have resulted in an adverse action, investigatory interviews shall be handled like adverse action cases and employee representation shall be allowed.

33030.10.2 State Time

Use of state time is restricted and shall be approved by the affected employee's supervisor.

- Absent an emergency, employees may request and shall be allowed reasonable state time by the supervisor to contact/secure a representative and to discuss the matter prior to any meeting/interview regarding an adverse action.

- The employee shall also be allowed reasonable state time to prepare for the interview/meeting with the representative.
- Job stewards shall be allowed reasonable time for the purpose of representing employees during working hours without loss of compensation. No other employee representative shall be allowed to confer with employees on state time.

33030.11 EAPT Processing of Cases

The AGC, or designee, shall assign designated cases to a Vertical Advocate immediately following the case being accepted for investigation by Central Intake. The AGC shall document the case assignment in the Case Management System (CMS) and the ProLaw Database (legal database). Following assignment by the AGC, the Vertical Advocate shall be responsible for the continual update of the CMS legal page until transfer of the investigation to the Hiring Authority. Upon transfer of the investigation to the Hiring Authority, the Vertical Advocate shall ensure that the case is entered into the legal database and shall be responsible for continual update in that database until closure of the case. The legal database shall cross-reference the investigation number in order to track the case through the CMS and the legal database.

As soon as operationally feasible, but no later than twenty-one (21) calendar days after the assignment of a case, the Vertical Advocate shall contact the assigned investigator for designated cases and the assigned SAIG, for cases the BIR is monitoring, to discuss the elements of a thorough investigation of the alleged misconduct. All contacts with the assigned investigator and the SAIG shall be documented by the Vertical Advocate on the CMS legal page or in the legal database.

33030.12 Statute of Limitations

As soon as operationally possible, but no later than twenty-one (21) calendar days following assignment of a case, the Vertical Advocate shall confirm in the CMS the date of the reported incident, the date of discovery, the statute of limitations expiration date, and any exceptions to the statute of limitations known at that time. The Vertical Advocate shall consult with the assigned investigator and the SAIG, for cases being monitored by the BIR, if the deadline for filing the adverse action should be modified. The factors to consider in making an assessment of timeliness are as follows:

33030.12.1 Peace Officers

According to Government Code section 3304 (d), the following applies:

Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event

that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.*
- (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.*
- (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.*
- (4) If the investigation involves more than one employee and requires a reasonable extension.*
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.*
- (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.*
- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.*
- (8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.*

Government Code section 3304 (g) states the following:

- (g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:*
 - (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.*
 - (2) One of the following conditions exist:*
 - (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.*
 - (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.*

33030.12.2 Non-Peace Officer Employees

According to Government Code section 19635, the following applies:

No adverse action shall be valid against any state employee for any cause for discipline based on any civil service law of this state, unless notice of the adverse action is served within three years after the cause for discipline, upon which the notice is based, first arose. Adverse action based on fraud, embezzlement, or the

falsification of records shall be valid, if notice of the adverse action is served within three years after the discovery of the fraud, embezzlement, or falsification.

33030.13 Investigation Review

Upon completion of the investigative report for designated cases, the investigator shall provide a copy of the investigative report and all supporting documentation to the Vertical Advocate, for designated cases, and the SAIG, for cases monitored by the BIR, for review. As soon as operationally possible, but no more than twenty-one (21) calendar days following receipt of the investigative report, the Vertical Advocate shall review the investigative report and supporting documentation and provide feedback to the assigned investigator. This feedback shall address the thoroughness and clarity of the report, shall provide recommendations regarding any Peace Officer Bill of Rights or union contract issues, and shall recommend additional investigation that may be necessary to complete the investigative report. The Vertical Advocate shall provide a written confirmation of these discussions (i.e. memorandum or e-mail) to the investigator, with a copy to the Hiring Authority and SAIG. The investigator shall forward a copy of the written confirmation of these discussions to his/her OIA case supervisor. The Vertical Advocate shall document all related communications in the legal page of the CMS.

Following completion of the review process above, the investigator shall provide the investigative report to the Hiring Authority. As soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the final investigative report, the Hiring Authority shall review the investigative report and supporting documentation. The Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when reviewing the investigation and making investigative findings. The following shall be considered:

- Whether the investigation is sufficient;
- Whether the allegation(s) in the investigation are founded or not;
- Whether corrective or disciplinary action is supported by the facts;
- If disciplinary action is supported by the facts, what penalty is appropriate within the parameters of the Disciplinary Matrix;
- What causes for discipline under Government Code section 19572 are supported by the factual findings;
- What recommendations are made by the SAIG, for cases the BIR is monitoring.

The Vertical Advocate shall document all related communications in the legal page of the CMS including, specifically, his/her recommendations to the Hiring Authority regarding the investigative findings.

For investigations that are sufficient, the Hiring Authority shall indicate the findings on CDCR Form 402 for each allegation and shall indicate whether corrective or disciplinary action shall follow. The CDCR Form 402 shall be forwarded to the ERO/Disciplinary

Officer. The ERO/Disciplinary Officer shall (1) record the findings in the CMS database, and either (2) initiate corrective or disciplinary action as directed by the Hiring Authority, for non-designated cases or (3) forward a copy of the CDCR Form 402 to the Vertical Advocate, for designated cases, to initiate disciplinary action. If there is significant disagreement regarding investigative findings on a designated case or a case monitored by the BIR, the CDCR Form 402 shall not be completed until Executive Review has concluded (Refer to section 33030.14 “Executive Review.”)

For investigations that are insufficient, the Hiring Authority shall document requests for additional investigation on the CDCR Form 402 and shall forward the CDCR Form 402 to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall retain the original CDCR Form 402 in the Adverse Action file and shall forward a copy of the CDCR Form 402 to the assigned investigator; the Central Intake Unit; the appropriate OIA regional office; the Vertical Advocate for designated cases; and SAIG for cases monitored by the BIR. The investigator shall provide to the Hiring Authority the requested information or complete additional investigations as soon as operationally possible.

33030.13.1 Investigative Findings

The findings of each allegation shall be determined by the Hiring Authority in consultation with the Vertical Advocate for designated cases and the SAIG for cases the BIR is monitoring. The findings and their explanations are as follows:

- **NO FINDING:** The complainant failed to disclose promised information to further the investigation; the investigation revealed that another agency was involved and the complainant has been referred to that agency; the complainant wishes to withdraw the complaint; the complainant refuses to cooperate with the investigation; or the complainant is no longer available for clarification of facts/issues.
- **NOT SUSTAINED:** The investigation failed to disclose a preponderance of evidence to prove or disprove the allegation made in the complaint.
- **UNFOUNDED:** The investigation conclusively proved that the act(s) alleged did not occur, or the act(s) may have, or in fact, occurred but the individual employee(s) named in the complaint(s) was not involved.
- **EXONERATED:** The facts, which provided the basis for the complaint or allegation, did in fact occur; however, the investigation revealed that the actions were justified, lawful, and proper.
- **SUSTAINED:** The investigation disclosed a preponderance of evidence to prove the allegation(s) made in the complaint.

33030.13.2 Investigative Closure Memorandum

Upon conclusion of each internal affairs investigation, the ERO/Disciplinary Officer shall transmit an “Internal Affairs Investigation Closure” memorandum to each subject of an investigation. The closure memorandum shall be signed by the Hiring Authority, shall outline the findings for each specific allegation, and shall be transmitted after the Hiring Authority completes CDCR Form 402 and prior to the imposition of disciplinary action.

The ERO/Disciplinary Officer shall forward the original closure memorandum to the subject of the investigation, forward copies to the Vertical Advocate for designated cases and the SAIG for cases monitored by the BIR, and shall retain a copy of the closure memorandum in the Adverse Action file.

33030.14 Executive Review

The purpose of Executive Review is to resolve significant disagreements between stakeholders about investigative findings, imposition of a penalty, or settlement agreements. Executive Review may be requested by the Hiring Authority, Vertical Advocate, AGC, SAIG, or CAIG and may be in person or via teleconference. Participants shall include, but are not limited to the following: the Hiring Authority; the Hiring Authority's supervisor, or designee; the AGC, or designee; and the CAIG, or designee.

In all cases, Executive Review shall be concluded prior to the statute of limitations expiration date. When Executive Review is initiated, completion of the CDCR Forms 402 or 403, service of the Final Notice of Adverse Action or *Skelly* Letter, and/or approval of the settlement agreement shall be delayed until the Executive Review is concluded and a determination has been made regarding investigative findings, imposition of a penalty, or details of the settlement agreement. If Executive Review is requested, the Hiring Authority shall immediately forward the CDCR Forms 402 and 403 (as applicable), the investigative report (if an investigation was conducted), and the proposed settlement agreement (if applicable) to his/her supervisor; the AGC; and the CAIG. The Hiring Authority's supervisor, or designee, shall schedule the Executive Review and shall notify the appropriate Chief Deputy Secretary, as necessary, following each Executive Review and provide all requested information. If a decision cannot be reached through Executive Review, the Hiring Authority's supervisor shall immediately elevate the matter to the appropriate Chief Deputy Secretary or higher for resolution.

33030.15 Types of Adverse Action Penalties

The five types of penalties for adverse actions are as follows:

33030.15.1 Letter of Reprimand

A letter of reprimand is the lowest level of penalty in the adverse action process and may be used when an action greater than corrective action is necessary. A letter of reprimand shall be retained as an official part of the employee's personnel record.

33030.15.2 Salary Reduction within the Salary Range of the Class

A salary reduction may be one (1) or more salary steps down to the minimum salary of the employee's class and is usually utilized in place of a suspension of an employee whose continued service on the job is necessary.

33030.15.3 Suspension without Pay

Suspension shall be specified in working days and may incur a penalty level from one (1) work day to several pay periods. The suspension is considered a temporary separation during which the employee does not work and salary is docked for the specified period of time. Any holiday falling within the time period is not counted as a working day. An employee's service credits and health benefits may be affected, depending upon the length of the suspension.

If Work Week Group E or SE employee receives a suspension penalty, it shall not be for a period of less than five (5) working days, unless the union contract provides otherwise.

33030.15.4 Demotion to a Lower Class

Demotions shall occur when continued service is of value, but the employee is not working at the expected level of the classification. A demotion shall be imposed only when the employee qualifies for and can be expected to do a satisfactory job at the lower level. Demotion may be to any salary in the next lower class that does not exceed the salary the employee last received; however, it is possible to demote to any lower class, within the promotional chain, at a lower than maximum salary. The Notice of Adverse Action must contain the exact salary for each class. A demotion may be permanent or temporary. If temporary, the employee automatically returns to the higher class on the date specified and at the salary step determined by the Hiring Authority. If permanent, the employee can compete for a promotion at a later date.

33030.15.5 Dismissal from State Service

Dismissal is appropriate for exceptionally serious misconduct, misconduct that is not correctible through discipline, or misconduct which immediately renders the individual unsuitable for continued employment. Dismissal may or may not be preceded by other forms of adverse action (i.e. progressive discipline). (See CCR, title 2, section 211 for additional information.)

33030.16 Employee Disciplinary Matrix Penalty Levels

1 Official Reprimand	4 Salary Reduction 10% for 3-12 months <i>or</i> Suspension w/o pay for 6-24 work days	7 Suspension w/o pay for 49-60 work days
2 Suspension w/o pay for 1-2 work days	5 Salary Reduction 5% for 13-36 months <i>or</i> Suspension w/o pay for 13-36 work days	8 Demotion to a lower class
3 Salary Reduction 5% for 3-12 months <i>or</i> Suspension w/o pay for 3-12 work days	6 Salary Reduction 10% for 13-24 months <i>or</i> Suspension w/o pay for 26-48 work days	9 Dismissal
Work Week Group E and SE employees shall not receive a suspension of less than five (5) work days, unless the union contract provides otherwise.		

33030.17 Applying the Employee Disciplinary Matrix

Sufficient evidence establishing a preponderance is necessary before any disciplinary action can be taken. The Employee Disciplinary Matrix shall be the foundation for all disciplinary action considered and imposed by the Department and shall be utilized by the Hiring Authority to determine the penalty to impose for misconduct. No favor shall be afforded simply because of an employee's rank, and managers, supervisors, and sworn staff may be held to a higher standard of conduct. Off duty misconduct for non-sworn staff requires a nexus between the employee's behavior and the employment.

The Employee Disciplinary Matrix is based on the assumption that there is a single misdeed at issue and that the misdeed is the employee's first adverse action. The Matrix provides a base penalty within a penalty range. The base penalty (represented with bold and underlined text) shall represent the starting point for an action. The Hiring Authority shall impose the base penalty unless aggravating or mitigating factors are found. The Hiring Authority or designee is not required to impose an identical penalty in each case because there are a variety of factors which may influence the Hiring Authority to take stronger action in one case than it does in another. The appropriate level of penalty within the specified range shall be based on the extent to which the employee's conduct resulted in or, if repeated, is likely to result in harm to public service; the circumstances surrounding the misconduct; and the likelihood of recurrence.

A single misdeed may result in several different violations of the Government Code. It is the nature of the misconduct and aggravating or mitigating factors, as discussed below, which determine the final penalty included in the Notice of Adverse Action and not the number of Government Code sections cited in the Notice of Adverse Action.

Multiple acts of misconduct may occur during a continuing event, contiguous or related events, or may be entirely independent of each other. When multiple acts of misconduct occur, the Employee Disciplinary Matrix shall be used to determine which single act warrants the highest penalty. The penalty range for the most severe charge shall be utilized, and other acts of misconduct are considered as aggravating circumstances that may increase the penalty up to and including dismissal.

33030.18 Mitigating and Aggravating Factors

Aggravating and mitigating factors shall be considered and may increase or decrease the penalty within the penalty range. Aggravating or mitigating factors may not pertain directly to the circumstances of the misconduct but shall be relevant. Rarely will mitigating circumstances exonerate employees; however, mitigating circumstances may be used to reduce the penalty that might otherwise be imposed. Aggravating circumstances may increase a penalty to dismissal, for misconduct where dismissal is not included in the penalty range. Mitigating circumstances may decrease a penalty to corrective action for misconduct only when penalty level number 1 (Letter of Reprimand) is the expected penalty within the penalty range.

The following mitigating factors shall be considered when determining a penalty:

- The misconduct was unintentional and not willful;
- The misconduct was not premeditated;
- The employee had a secondary and/or minor role in the misconduct;
- Based upon length of service, experience, policy directives, and the inherent nature of the act, the employee may not have reasonably understood the consequences of his/her actions;
- Commendations received by the employee;
- The employee was forthright and truthful during the investigation;
- The employee accepts responsibility for his/her actions;
- The employee is remorseful;
- The employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

The following aggravating factors shall be considered when determining a penalty:

- The misconduct was intentional and willful;
- The misconduct was premeditated;
- The employee had a primary and/or leadership role in the misconduct;
- Based upon length of service, experience, policy directives, inherent nature of the act, the employee knew or should have known that his/her actions were inappropriate;
- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;

- The misconduct resulted in serious injury;
- More than one act of misconduct forms the basis for the disciplinary action being taken;
- The employee was evasive, dishonest, or intentionally misleading during the investigation;
- The employee does not accept responsibility for his/her actions;
- The employee did not report the harm caused and/or attempted to conceal the harm through action or inaction;
- The employee has sustained other related adverse action(s).

33030.19 Employee Disciplinary Matrix

The following list of charges and causes for disciplinary action is representative only and is not all inclusive.

The base penalty is bolded and underlined.	
A. ATTENDANCE	PENALTY
1) Excessive tardiness. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty)	<u>1</u> 2 3
2) Unauthorized absence. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 j, Inexcusable Absence without Leave)	<u>1</u> 2 3
3) Abuse of sick leave. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty)	<u>1</u> 2 3
B. CODE OF SILENCE or RETALIATION	PENALTY
1) Intentional failure to report misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
2) Intimidation, threats, or coercion that could interfere with an employee's right to report misconduct or an act of retaliation for reporting misconduct. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 x, Retaliation)	4 5 <u>6</u> 7 8 9

B. CODE OF SILENCE or RETALIATION (CONTINUED)	PENALTY
<p>3) Making false or intentionally misleading statements during a criminal or administrative investigation or inquiry by any agency.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	7 8 <u>9</u>
<p>4) Any independent act(s) which prevents or interferes with the reporting of misconduct.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	7 8 <u>9</u>
<p>5) Any involvement in a coordinated effort with other employees to prohibit the reporting of misconduct.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	7 8 <u>9</u>
C. CONTROLLED SUBSTANCES	PENALTY
<p>1) Use or possession of controlled substances on or off duty, unless medically prescribed.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	4 5 6 7 8 <u>9</u>
<p>2) Sale of illegal drugs or narcotics.</p> <p>(Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	<u>9</u>
D. CONDUCT or INEFFICIENCY	PENALTY
<p>1) Discourtesy toward inmates, other employees, or the public.</p> <p>(Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	<u>1</u> 2 3

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
<p>2) Endangering self, fellow employees, inmates, or the public by violation of Departmental training, laws, or ordinances.</p> <p>(Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	1 <u>2</u> 3
<p>3) Leaving assigned post without supervisor approval.</p> <p>(Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)</p>	1 <u>2</u> 3
<p>4) Distraction from duty.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	<u>1</u> 2 3
<p>5) Participating in illegal gambling on duty.</p> <p>(Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	1 <u>2</u> 3
<p>6) Unauthorized use of position in the Department, uniform, or equipment on behalf of a political candidate or issue.</p> <p>(Gov. Code § 19572 n, Improper Political Activity) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	1 <u>2</u> 3
<p>7) Inappropriate involvement in a law enforcement matter.</p> <p>(Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	1 <u>2</u> 3
<p>8) Improper access to confidential information.</p> <p>(Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	1 <u>2</u> 3 4
<p>9) Improper transmittal of confidential information with malicious intent or for personal gain.</p> <p>(Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	4 5 6 <u>7</u> 8 9
<p>10) Disruptive, offensive, or vulgar conduct which causes embarrassment to the Department.</p> <p>(Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	2 <u>3</u> 4

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
11) Asleep while on duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)	2 <u>3</u> 4
12) Use or abuse of over-the-counter or prescription drugs while on duty which impairs an employee's ability to discharge his/her duties. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>3</u> 4 5 6
13) Intimidation, threats, or assault (without the intent to inflict serious injury) toward a member of the Department. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	3 <u>4</u> 5 6
14) Battery against a member of the Department with the intent to inflict injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	7 8 <u>9</u>
15) Making insults to anyone pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)	3 <u>4</u> 5 6
16) Harassing anyone based upon race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)	4 5 <u>6</u> 7 8 9
17) Sexual misconduct involving staff, up to and including harassment. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
18) Over-familiarity with an inmate(s)/parolee(s). (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
19) Sexual misconduct with an inmate(s)/parolee(s). (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
20) Solicitation of prostitution. (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 <u>7</u> 8 9
21) Drunkenness on duty. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior) CCR, title 15, §3410	4 5 <u>6</u> 7 8 9
22) Use of identification or position in the Department to solicit a gratuity or privilege. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6 7
23) Operating the employee's personal vehicle, state vehicle, or state equipment for state business while under the influence of alcohol or illegal prescription drugs. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
24) Bringing contraband into a security area for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 <u>4</u> 5 6
25) Bringing contraband into a security area for an inmate and/or for personal gain. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
26) Failure to observe and perform within the scope of training. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 <u>3</u> 4 5 6
27) Intentional failure to intervene or attempt to stop misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
28) Felony criminal conviction. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
E. INTEGRITY	PENALTY
1) Petty theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 - 6 Penalty shall be relative to value and circumstances.
2) Grand theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 - 9 Penalty shall be relative to value and circumstances.
3) Making false or intentionally misleading statements to a supervisor. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
4) Making false or intentionally misleading statements to a public safety officer on or off duty. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
5) Any form of cheating on a civil service examination, including but not limited to unauthorized possession, use, or distribution of examination material or participating in an examination for another person. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>

E. INTEGRITY (CONTINUED)	PENALTY
6) Falsification of time records or financial record for fraudulent purposes. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
7) Falsification or making intentionally misleading statements in official reports or records. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
8) Falsification of application or omission of information for employment or promotion when it materially affects acceptance or rejection for employment or promotion. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
9) Falsification, alteration, or planting of evidence. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
10) False testimony under oath. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
F. FAILURE TO COMPLY	PENALTY
1) Failure to report employment outside the Department. (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	<u>1</u> 2 3
2) Failure to attend required training. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	<u>1</u> 2 3
3) Accepting employment outside the Department which imposes a conflict of interest or having financial interest in any contract made by an employee in their official capacity or by any body or board of which the employee is a member. (Gov. Code § 1090) (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	3 <u>4</u> 5 6
4) Failure to follow lawful instructions or refusal to act as lawfully directed by a supervisor or higher ranking official. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	3 <u>4</u> 5 6
5) Refusal to submit to or take any oath or affirmation required by law or ordinances. (Gov. Code § 19572 s, Refusal to Take an Oath)	<u>9</u>

F. FAILURE TO COMPLY (CONTINUED)	PENALTY
6) Refusal to take a medical examination or to submit to chemical testing, as required by civil service rules, ordinances, or lawful order. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	2
G. MISUSE OF STATE EQUIPMENT or PROPERTY	PENALTY
1) Unauthorized use of state telephones or photocopy equipment for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
2) Failure to carry required equipment. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
3) Misuse or non-use of issued equipment. (Gov. Code § 19572 p, Misuse of State Property)	<u>1</u> 2 3
4) Misappropriation of state equipment, property, supplies, or funds. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 - 9 Penalty shall be relative to value of misappropriation and circumstances.
H. OFF DUTY INCIDENTS	PENALTY
1) Failure to report off duty arrest to the Hiring Authority. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Drunk or disorderly conduct in public. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
3) Off duty drunk driving. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
4) Off duty drunk driving with collision. (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
5) Carrying an unauthorized weapon off duty. (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
6) Domestic violence. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9

H. OFF DUTY INCIDENTS (CONTINUED)	PENALTY
7) Intimidation, threats, or assault of a private citizen without intent to inflict serious injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 <u>4</u> 5 6
8) Battery of a private citizen with intent to commit injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
I. TRAFFIC RELATED INCIDENTS WHILE ON DUTY	PENALTY
1) Dangerous or negligent driving. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Dangerous or negligent driving with collision. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
3) Dangerous or negligent driving with collision and injuries. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8
J. USE of FORCE	PENALTY
1) Unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
2) Significant unreasonable use of force likely to cause injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
3) Significant unreasonable use of force likely to cause serious injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
4) Employee's failure to report his/her own use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 <u>4</u> 5 6
5) Employee's failure to report his/her own unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>

J. USE of FORCE (CONTINUED)	PENALTY
6) Employee's failure to report use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 <u>4</u> 5 6
7) Employee's failure to report unreasonable use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
K. WEAPONS – LETHAL & LESS-LETHAL WHILE ON DUTY	PENALTY
1) Misuse or non-use of available weapon(s). (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 v, Inappropriate Target Practice)	1 <u>2</u> 3
2) Careless handling of duty weapon(s) resulting in discharge of weapon(s). (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
3) Inappropriate display of weapon(s). (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
4) Gross negligence in handling of duty weapon(s). (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8 9

33030.20 Imposition of Penalty and Consultation

After determining the investigative findings, or in cases where direct adverse action is taken without an investigation, the Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when determining a penalty. The following shall be considered:

- The seriousness of the misconduct;
- Harm or potential harm to the public service;
- The circumstances surrounding the misconduct;
- The likelihood of recurrence;
- Whether or not progressive discipline has been taken in the past;
- Other mitigating or aggravating circumstances.

The Hiring Authority shall justify and document each penalty on the CDCR Form 403. The completed CDCR Form 403 shall be signed by the Hiring Authority at least fourteen (14) calendar days before service of the Notice of Adverse Action and shall be forwarded

to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall retain the original CDCR Form 403 in the Adverse Action file and shall forward a copy to the Vertical Advocate for designated cases and to the SAIG for cases monitored by the BIR. For designated cases, the Vertical Advocate shall provide to the Hiring Authority, SAIG, and AGC a written confirmation (i.e. memorandum or e-mail) of penalty discussions with the SAIG. The Vertical Advocate shall also document all communications related to penalty imposition in the legal database.

For all cases for which the penalty is dismissal, the ERO/Disciplinary Officer or Vertical Advocate shall provide to the AGC and the Hiring Authority shall provide to his/her immediate supervisor the following: written notification (i.e. memorandum or e-mail) regarding the proposed penalty; a copy of the CDCR Form 403; and any other requested documentation. The Hiring Authority shall delay service of the Final Notice of Adverse Action for three (3) business days following transmittal of the written notification, so there is time for Executive Review to be requested. At this time, the AGC, or designee, shall make a determination whether the non-designated dismissal case will be assigned to a Vertical Advocate for prosecution before the SPB. This determination shall be based upon factors including the complexity of the case and whether the actual behavior prior to the investigation warrants a dismissal. The AGC shall notify the Vertical Advocate and the Hiring Authority of the case assignment and the reasons for the determination.

33030.21 Setting the Effective Date of the Action

After consulting with the employee's personnel/payroll office, the Hiring Authority shall determine the effective date(s) of the adverse action after allowance for the *Skelly* period [minimum of five (5) working days or twenty (20) calendar days for managers]. For cases the BIR is monitoring, the effective date shall be at least twenty-one (21) calendar days following the date of service of the Notice of Adverse Action. Consideration shall be given to the following:

- Suspensions shall be computed on a 24-hour work day basis, excluding legal holidays and regular days off. Holidays are not considered working days for suspension. There is no pay for a holiday occurring during a period of suspension. Holidays occurring during a period of suspension in effect increase the penalty by one day and such scheduling shall be avoided whenever possible. (Example: Four working days suspension for the period of July 1, __, 0800 hours, through July 6, __, 0759 hours; employee loses five (5) days pay).
- Time absent on suspension may delay the employee's next merit salary adjustment and may affect the earnings of vacation and sick leave credits (refer to DOM or a personnel specialist).
- In computing reductions in salary, the effective date of reduction shall coincide with the beginning of a pay period and amounts shall coincide with the existing salary range.
- Effective dates for all actions involving pay issues shall be coordinated with the employee's personnel/payroll office to avoid overpayment situations.

- The effective date of the adverse action may only be modified if the Hiring Authority serves to the affected employee a written amendment to the Notice of Adverse Action.

33030.22 Adverse Action Documentation

Adverse action documentation shall be completed, in all cases, prior to the statute of limitations expiration date. The Vertical Advocate shall monitor due dates and provide legal advice to the Hiring Authority and the ERO/Disciplinary Officer for all cases. The Vertical Advocate shall draft the Notice of Adverse Action for all designated cases and shall forward a draft Notice of Adverse Action to the SAIG for cases monitored by the BIR. For all other cases, the Vertical Advocate shall consult with the ERO/Disciplinary Officer upon request regarding other Notices of Adverse Action drafted by the ERO/Disciplinary Officer.

When drafting a Notice of Adverse Action the ERO/Disciplinary Officer, in consultation with the Vertical Advocate, shall ensure the following:

1. Each cause(s) for discipline supported by the facts is included.
2. At least one Government Code section is cited as a cause for each act of misconduct.
3. All the facts in support of the causes for discipline are included.
4. All facts fall within the statute of limitations.
5. All facts are alleged with sufficient specificity to meet the requirements of SPB Precedential Decision No. 91-04, In re: Korman.
6. When required under the Bodiford Settlement, the employee was served with a Preliminary Notice of Adverse Action and all supporting documentation, at least 24-hours prior to service of the Notice of Adverse Action.
7. If the subject employee is a peace officer, he or she is being served with the Notice of Adverse Action within thirty (30) calendar days of the decision to take disciplinary action.
8. The employee's rights and entitlements are included, as follows:
 - a. *Skelly* Rights:
 - i. Notice of the proposed action.
 - ii. Notice of the reasons for the proposed action in writing at least five (5) working days before the adverse action becomes effective [twenty (20) calendar days for managers].
 - iii. A copy of the charges on which the action is based in sufficient detail for the employee to prepare a defense.
 - iv. A copy of all materials upon which the action is based, including any documents, photographs, tape recordings, video tapes, complete investigative reports (e.g., reports and other materials that the Hiring Authority relied upon in forming the decision to take the action).
 - v. The right to respond to a manager who was not involved in the investigation of the action currently being taken against the employee.

- vi. The right to be represented when responding to the Hiring Authority imposing the discipline.
- b. Right to appeal to the SPB.
- 9. The notice includes other appropriate considerations, such as:
 - a. Training received;
 - b. Prior counseling received;
 - c. Prior discipline;
 - d. A statement that peace officers are held to a higher standard with regard to honesty and integrity and that his or her actions have not met this standard.

33030.23 Adverse Action Documentation - Summary of Adverse Action

The Summary of Adverse Action shall be completed for non-designated cases by the ERO/Disciplinary Officer as follows:

1. Work History: A biographical summary of the employee's employment history:
 - a. Location and dates of assignment.
 - b. Prior adverse actions with causes and dates listed.
 - c. Special commendations (restricted to departmental commendations or commendations from other agencies). Do not include routine letters of thanks or routine training certificates of accomplishment.
 - d. Incident reports-commendable and censurable. (Include any current Letters of Instruction.)
2. Chronological Summary of the Investigation: Write the summary as briefly and concisely as possible. Supporting reports, documents, and complete statements should be included as exhibits and referenced in the chronological summary.
 - a. The summary shall be in chronological sequence based on the steps taken by the investigator beginning with receipt of the information that precipitated the investigation.
 - b. Briefly describe each act of misconduct that supports the allegation.
 - c. Obtain dates, times, and the names of supervisors conducting corrective interviews. Copies or corrective memorandums, incident reports, etc., shall be included as exhibits.
3. Summary of Witnesses Statements : Prepare a list of witnesses as follows:
 - a. Include the witness' full name and, if the witness is a State employee, his/her civil service classification title.
 - b. Below each name, identify the facts of the case for which the witness shall testify.
 - c. Briefly summarize witness' statements in the sequence they were developed. The summary should contain all pertinent points contained in the statement.
4. Attachments: All documents gathered during the investigation including signed statements, transcripts, vouchers, receipts, performance reports, incident reports, photographs, and CDC Form 602 (Inmate/Parolee Appeal Form).

33030.23.1 Documentation Format

Clerical support staff, under the supervision of the ERO/Disciplinary Officer, shall compile adverse action documentation as follows:

1. Type the Preliminary Notice of Action on the departmental form memorandum.
2. Type Notice of Adverse Action on Department letterhead as follows:
 - a. The type of notice shall appear in capital letters and shall be centered four spaces below the letterhead.
 - b. The employee's name, civil service classification, worksite name and location (including institution or parole region, if applicable) are typed in block style at the left-hand margin, four spaces below the title. A Confidential Department Employee Information Sheet shall be attached and contain current home address and social security number.
 - c. Divide the body of the formal notice into sections indicated by Roman numerals as identified below:
 - I. Statement of the Nature of the Adverse Action.
 - II. Effective Date of This Adverse Action.
 - III. Statement of Causes.
 - IV. Statement of Facts.
 - V. Notice and Progressive Discipline
 - VI. Statement as to Right to Answer and Appeal.
 - VII. Statement as to Right to Respond to Your Appointing Power.
3. Include notations explaining the meaning of abbreviations used in supporting documentation and, in the signature block of the notice, the typed name, work location, business address and telephone number of the Hiring Authority.

33030.23.2 Declaration of Service

The ERO/Disciplinary Officer, or his/her assistant, shall be responsible for completion of Declaration of Service for the following documents provided to an employee either by mail or in person:

- Preliminary Notice of Adverse Action;
- Notice of Adverse Action;
- Notice of Automatic Resignation (AWOL separation);
- Response to resignation;
- Stipulation for resignation in lieu of adverse action;
- "Notice of Leave of Absence Pending Investigation (ATO)";
- Notice of Rejection During Probationary Period.

Notices of Adverse Action and Preliminary Notices of Adverse Action shall be sent via United States Postal Service (USPS) as registered mail with return receipt requested. Clerical support staff shall coordinate the adverse action documentation as follows:

1. Address an envelope to the employee's current home address and type in capital letters in the lower left corner of the envelope the words, "Return Receipt Requested."
2. Attach to each notice a barcoded red Label 200 (available for registered mail from an USPS office). The label shall be placed above the delivery address and to the right of the return address (or to the left of the delivery address on parcels).
3. Type the information required on the PS Form 3811, Domestic Return Receipt, and affix the PS Form 3811 to the back of the sealed envelope/parcel. The name and address of the Hiring Authority is typed on the front in the space under "Return to."
4. When returned, the PS Form 3811 shall be filed with the copy of the Notice of Adverse Action or Preliminary Notice of Adverse Action.

33030.24 *Skelly* Hearing Process

All department employees shall be offered a *Skelly* Hearing prior to imposition of any adverse action, including disciplinary transfers, so the affected employee may respond to the charges contained in the Notice of Adverse Action. Employees waive his/her right to a *Skelly* Hearing by not formally requesting a *Skelly* Hearing.

33030.24.1 Notice and Request for *Skelly* Hearing

Notice of the right to a *Skelly* Hearing prior to the effective date of the action shall be provided at least five (5) working days prior to the effective date of the action and twenty (20) calendar days for managers that are being disciplined (pursuant to Government Code section 19590). This period of time is known as the "*Skelly* Period." If any provision of the policy is inconsistent with a bargaining unit Memorandum of Understanding (MOU), the MOU prevails.

33030.24.2 *Skelly* Hearing

The *Skelly* Hearing is attended by the following: *Skelly* Officer; affected employee; employee's representative if the employee requests a representative; the ERO/Disciplinary Officer, or other designee representing the Hiring Authority; the ERO/Disciplinary Officer's assistant or other person designated to take notes; the Vertical Advocate for all designated cases; and the SAIG for cases the BIR is monitoring.

The ERO/Disciplinary Officer shall coordinate all *Skelly* Hearings and shall ensure the comprehensive taking of minutes. The minutes from each *Skelly* Hearing shall remain in the ERO/Disciplinary Officer's file. Tape recordings of the *Skelly* Hearing shall not be permitted.

Affected employees who request a *Skelly* Hearing shall be notified of the identity of the *Skelly* Officer. The *Skelly* Officer shall review the Notice of Adverse Action or other charging document and all supporting materials prior to the *Skelly* Hearing. The *Skelly* Officer shall listen to and review the affected employee's side of the story and shall allow the affected employee the opportunity to present arguments that the adverse action should not be sustained or should be reduced in some way.

If an affected employee chooses to waive the right to a noninvolved manager acting as the *Skelly* Officer and requests that the Hiring Authority that took the action act as the *Skelly* Officer, the employee may do so within the *Skelly* period by signing a CDCR Form 3028, Waiver of Non-Involved *Skelly* Officer.

When reviewing the imposition of discipline, the *Skelly* Officer shall consider whether the action is as follows:

- Timely;
- Based on the proper statutory cause;
- Supported by the facts.

The affected employee shall be allowed representation during the *Skelly* Hearing. The affected employee and/or the employee's representative may present to the *Skelly* Officer either in writing or orally or both. The employee also may submit affidavits. However, the *Skelly* Officer has the right to restrict any oral presentation that is argumentative or repetitive.

The *Skelly* Hearing is not an evidentiary proceeding; therefore, the affected employee does not have the right to confront the Department's witnesses or call witnesses on the employee's behalf. The *Skelly* Officer may ask clarifying questions, as are appropriate. The *Skelly* Officer is not subject to examination by either the affected employee or the employee's representative, and is not required to provide any response to the information submitted by the affected employee or the employee's representative except to acknowledge receipt.

The Vertical Advocate, unless precluded by a scheduling conflict, shall attend the *Skelly* Hearing for all designated cases. During the *Skelly* Hearing, the Vertical Advocate shall observe the proceedings but not give legal advice to the *Skelly* Officer. The ERO/Disciplinary Officer shall be available to provide technical assistance to the *Skelly* Officer, if needed. The SAIG may also attend the *Skelly* Hearing for cases that the BIR is monitoring. The *Skelly* Officer shall remain objective and make an independent recommendation to the Hiring Authority. The Vertical Advocate shall remain available to participate in any settlement discussions as the department's representative. The Vertical Advocate shall consult with the SAIG present at the *Skelly* Hearing, and provide legal advice to the Hiring Authority regarding any new information and legal arguments that emanated from the *Skelly* process.

33030.24.3 *Skelly* Officer's Recommendations

The affected employee shall not be informed of the *Skelly* Officer's recommendation to the Hiring Authority. The affected employee shall be advised at the *Skelly* Hearing that the final recommendation will not be announced at the *Skelly* Hearing but shall be conveyed to the Hiring Authority. The *Skelly* Officer's recommendation shall be conveyed to the Hiring Authority as soon as possible but no more than two (2) business days following the *Skelly* Hearing.

The *Skelly* Officer may make one of the following recommendations to the Hiring Authority:

- The action should proceed without modification;
- The action should be amended, modified, or reduced;
- The action should be withdrawn in its entirety.

After the initial *Skelly* Hearing and before making one of the above recommendations, the *Skelly* Officer may also request one/both of the following from the Hiring Authority:

- A response from the Hiring Authority with regard to any issue raised by the employee;
- That additional investigation be conducted.

If the *Skelly* Officer makes a recommendation other than that the action proceed without modification, the *Skelly* Officer must clearly state in writing each mitigating or aggravating fact or factor that the *Skelly* Officer considered relevant to his/her decision. The *Skelly* Officer's recommendation should be based on the employee's/representative's presentation and response to the charges, and the Hiring Authority's response, if any.

The affected employee will be advised if the Hiring Authority undertakes further investigation at the request of the *Skelly* Officer. If the *Skelly* Officer requests a response from the Hiring Authority and/or additional investigation, the Hiring Authority shall make every effort to complete any further investigation and to respond to the *Skelly* Officer within five (5) business days. The *Skelly* Hearing will not be considered concluded until the response from the Hiring Authority and/or additional investigation is provided to the *Skelly* Officer. The effective date of the adverse action originally served shall not change unless the Hiring Authority serves a written amendment to the Notice of Adverse Action.

33030.24.4 Settlement Discussions at the *Skelly* Hearing

During the *Skelly* Hearing, the affected employee may discuss his/her willingness to accept some discipline or other action at a level different than that imposed by the Hiring Authority or may communicate his/her willingness to resolve the adverse action directly with the Hiring Authority. The *Skelly* Officer shall not discuss these matters with the

affected employee. Instead, the *Skelly* Officer shall excuse him/herself or shall suggest that the affected employee, the employee's representative, and the Department's representative(s) privately discuss the possibility of settlement. These discussions shall not be used as evidence by either side if the matter does not end in settlement.

When a *Skelly* Hearing is suspended pending settlement negotiations, the parties should complete and sign the CDCR Form 3029, Suspension of *Skelly* Hearing. If discussions result in a settlement and the affected employee waives any right to appeal the matter further (including to the SPB and Superior Court), no further *Skelly* Hearing is required and the *Skelly* Officer's obligations are concluded. If the discussions do not result in settlement, the *Skelly* Officer shall return and complete the *Skelly* Hearing.

33030.25 Hiring Authority's Final Decision Regarding Imposition of Penalty

If the Hiring Authority proposes any post-*Skelly* penalty modification for a designated case, the Hiring Authority shall provide to the Vertical Advocate, SAIG, and AGC the following: (1) a written confirmation of penalty discussions (i.e. memorandum or e-mail) with the SAIG, including the Hiring Authority's proposed penalty modification and (2) a copy of the *Skelly* Officer's written recommendation. The Hiring Authority shall delay service of the *Skelly* Letter for three (3) business days following transmittal of the written notification, so there is time for Executive Review to be requested. The Vertical Advocate shall document all communications related to penalty imposition in the legal database.

For a post-*Skelly* action to completely withdraw any penalty or to modify any dismissal penalty, the Vertical Advocate shall provide to the AGC and the Hiring Authority shall provide to his/her immediate supervisor the following: written notification (i.e. memorandum or e-mail) regarding the proposed penalty; a copy of the CDCR Form 403; and any other requested documentation.

Unless further investigation is needed or Executive Review is requested, the *Skelly* Letter indicating the final decision of the Hiring Authority regarding disciplinary penalty shall be served to the affected employee within five (5) working days of the Hiring Authority's receipt of the *Skelly* Officer's recommendation.

33030.26 Settlement Agreements

The Hiring Authority or designee has the authority to settle all cases. However, prior to approving a settlement of a designated case the Hiring Authority shall consult with the assigned Vertical Advocate and the SAIG, for cases the BIR is monitoring, regarding both the form and substance of settlement agreements. If a settlement agreement is proposed during a hearing, the terms of the settlement shall be approved by the Hiring Authority, following consultation with the Vertical Advocate for designated cases and the SAIG for cases the BIR is monitoring. The Vertical Advocate also shall consult with and obtain approval from his/her EAPT supervisor to settle any case. If the Vertical

Advocate has obtained pre-hearing approval of settlement parameters, and the proposed settlement is within those parameters, the Vertical Advocate does not need to contact a supervisor for settlement authority at the time of the hearing.

The Vertical Advocate shall draft settlement agreements for all designated cases and cases assigned by the AGC and shall assist the Hiring Authority and ERO/Disciplinary Officer with drafting settlement agreements when requested. Settlement agreements may also be prepared by the employee's representative, with the approval and assistance of the Vertical Advocate in designated cases. All settlement agreements signed by CDCR representatives shall include the relevant clauses set forth in section 33030.26.2 below and require signature approval of all parties concerned.

The Vertical Advocate shall have a proactive role during settlement negotiations, shall review each term of a proposed settlement, and shall be available to advise the Hiring Authority on the appropriateness of all settlement agreements. Terms that are contrary to accepted Department policies and procedures shall not be incorporated into any settlement agreement. The Vertical Advocate shall research the existence of any other pending cases that involve the appellant (e.g., workers' compensation claims, civil lawsuits, whistleblower protection actions) and shall recommend global settlement of any or all cases as appropriate. The Vertical Advocate shall document all communications related to settlement agreements/penalty imposition in the legal database.

If the Hiring Authority proposes a settlement agreement for a designated case, or a case the BIR is monitoring, that includes withdrawal of any penalty or modification of any dismissal, the Hiring Authority shall provide to the Vertical Advocate, his/her immediate supervisor, the AGC, and the SAIG the following: written notification (i.e. memorandum or e-mail) regarding the proposed settlement; a copy of the CDCR Form 403; a copy of the proposed settlement; and any other requested documentation. Approval of the settlement agreement by the Hiring Authority shall be delayed for three (3) business days following transmittal of the notification, so that there is time for Executive Review to occur.

33030.26.1 Factors to Consider Prior to Agreeing to Settle

When a Hiring Authority considers whether or not settlement is warranted, the following factors shall be considered:

- The gravity of the conduct that brought about disciplinary action;
- The risk of harm to the public service if such misconduct recurs;
- Whether any court orders or corrective action plans have an impact on the decision to settle the disciplinary action;
- Whether, in accordance with the principle of progressive discipline, the settlement continues to have the effect of preventing future misconduct;

- Whether mitigating factors or other evidence, including evidence of remorse, were already considered at the *Skelly* Hearing, or as part of the underlying investigation;
- The length of the State service of the employee;
- Whether or not the employee has a record of prior discipline;
- Whether conditions can be obtained through settlement (i.e., drug and alcohol testing and counseling, anger management counseling, etc.) that cannot be obtained solely through continued prosecution of the adverse action;
- Flaws and risks in the case (including evidentiary problems, problems with witness availability, questions of law, etc.) not considered or known at the time of the preparation of the adverse action, or which have been exacerbated since the filing of the Notice of Adverse Action;
- The finality that settlement brings to a case.

33030.26.2 Essential Settlement Language

In addition to a recitation of the unique terms for any particular agreement, the settlement agreement documentation shall include the following key clauses:

Standard clauses:

APPELLANT, by his/her signature on this document, agrees to withdraw his/her Appeal to the NOTICE OF ADVERSE ACTION effective [insert date] and to waive any right he/she may have to appeal the NOTICE OF ADVERSE ACTION either before the State Personnel Board or any court of law which might have jurisdiction over the matter. Specifically, APPELLANT waives any rights he/she may have as set forth in sections “[insert number]” and “[insert number]” of the NOTICE OF ADVERSE ACTION; and, Code of Civil Procedure, Part 3, title 1, section 1067 through 1110 b, inclusive.

APPELLANT, by his/her signature on this document, and in exchange for such consideration as is set forth in this STIPULATION AND RELEASE, releases, acquits and forever discharges the State of California, the California Department of Corrections and Rehabilitation, and its agents, representatives, employees, successors and assigns, of and from any and all demands, actions, causes of action, claims of any kind or nature whatsoever, known and unknown, anticipated or unanticipated, past or present, and any claim under state or federal law including, but not limited to, claims under the Fair Employment and Housing Act, Title VII of the 1964 Civil Rights Act, and/or the Age Discrimination in Employment Act, which may exist as of the date hereof in connection with or arising out of the actions taken by the Department regarding this NOTICE OF ADVERSE ACTION.

APPELLANT is familiar with and has read the provisions of California Civil Code section 1542, and expressly waives to the fullest extent of the law any and all rights

he/she may otherwise have under the terms of that Code section which reads as follows:

“A general release does not extend to claims which the creditor does not know of or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

APPELLANT executes this release without reliance upon any statement or representation by the DEPARTMENT, or its representatives except as set forth in this document. APPELLANT is of legal age and is legally competent to execute this release. APPELLANT accepts fully the responsibility therefore, and executes this release after having read the STIPULATION AND RELEASE. After having been advised and having the opportunity to discuss it thoroughly with APPELLANT’S representative, [insert name], APPELLANT understands its provisions and enters into this STIPULATION AND RELEASE voluntarily.

This STIPULATION AND RELEASE is freely and voluntarily entered into, and APPELLANT hereby authorizes and orders his/her representatives of record to withdraw his/her appeal of the NOTICE OF ADVERSE ACTION, effective [insert date], currently pending before the State Personnel Board (Case No. [insert number].), as agreed in paragraph “(insert paragraph number)” of STIPULATION AND RELEASE.

If the Appellant is age forty years or older:

APPELLANT represents that he/she has been notified that he/she has the right to consider this STIPULATION AND RELEASE for at least twenty-one (21) calendar days before its execution. APPELLANT expressly waives this right.

APPELLANT shall have the right to revoke this STIPULATION AND RELEASE for seven (7) calendar days after its execution, and understands that this STIPULATION AND RELEASE does not become effective or enforceable until that revocation period has expired.

If an agreement includes a removal of an action at a specified time in the future:

Even though RESPONDENT agrees to remove the adverse personnel action from APPELLANT’S personnel file in accordance with the terms and conditions set forth in paragraph [insert number] of this agreement, APPELLANT is aware and understands that RESPONDENT can, at its option, use this adverse action for purposes of progressive discipline if APPELLANT receives an adverse action in the future.

If the Appellant has agreed to resign:

On [insert date], APPELLANT agrees that he/she will be deemed to have resigned. This resignation is irrevocable and is not contingent on the action of any other State agency, or in the future. Appellant further agrees, as part of the consideration and inducement for execution of the STIPULATION AND RELEASE, to never apply for or accept employment with the California Department of Corrections and Rehabilitation (CDCR), or any entity providing services to inmates or wards within the CDCR. If the Department inadvertently offers appellant a position, appellant breaches this agreement by accepting a position with the Department. APPELLANT shall be terminated at such time as is convenient to the Department and excluded from all institutions, and APPELLANT hereby waives any right APPELLANT may have to appeal that termination and/or exclusion in any forum.

33030.26.3 Documenting the Settlement Process

When a settlement is read into the record at a hearing, the above required language shall be read into the record accurately and shall include appropriate modifications as specified in the settlement agreement. The Vertical Advocate or ERO/Disciplinary Officer shall indicate on the record the names of the representatives who have agreed to this settlement.

Anytime a settlement agreement is reached, the Vertical Advocate or the ERO/Disciplinary Officer shall complete a CDC Form 3021, SPB Case Settlement Report, and shall forward the CDC Form 3021 to the AGC and to the SAIG for all cases monitored by the BIR. The CDC Form 3021 shall be utilized for audit purposes. The name of the manager providing settlement authority shall be reported under the "Name of Final Decision Maker" heading of the CDC Form 3021.

33030.27 Use of ATO

An employee shall only be placed on ATO as follows:

- He/she has been charged with a felony;
- He/she is suspected of smuggling contraband;
- He/she has shown unacceptable familiarity with inmates or parolees;
- He/she has seriously jeopardized the security of the institution;
- He/she has committed any other serious infraction of the CCR;
- The proposed discipline is dismissal.

Use of ATO should be considered when the employee's continued presence at the work site will adversely affect the security or management of the facility. However, when possible, an alternative assignment should be considered rather than placement on ATO.

33030.27.1 Request for ATO

The Hiring Authority shall request to place an employee on ATO as follows:

- All requests for placing an employee on ATO shall be approved through the Hiring Authority's supervisor, by telephone or in person.
- Initial approval for ATO by the Hiring Authority's supervisor shall be granted for a period not to exceed five (5) working days.
- The requesting unit shall notify the Office of Personnel Services Employee Discipline Unit immediately and the ERO/Disciplinary Officer shall initiate a written request.

In order to place an employee on ATO, the Hiring Authority shall provide a "Notice of Leave of Absence Pending Investigation (ATO)" to the affected employee.

The Hiring Authority shall contact his/her supervisor prior to the employee's fifth (5th) working day on ATO to request to continue an employee on ATO beyond five (5) working days. For requests to continue an employee on ATO beyond ten (10) working days, the Hiring Authority shall contact his/her supervisor prior to the employee's tenth (10th) working day on ATO. If the Hiring Authority's supervisor approved the request to continue an employee on ATO beyond ten (10) working days, the Hiring Authority's supervisor shall notify the appropriate Deputy Director/Director that an employee is to be continued on ATO beyond ten (10) working days.

If it is determined that an employee should be continued on ATO beyond fifteen (15th) working days, the Deputy Director/Director shall notify the appropriate Chief Deputy Secretary prior to the employee's fifteenth (15th) business day on ATO. The Deputy Director/Director shall instruct the Office of Personnel Services Employee Discipline Unit to request approval from the Department of Personnel Administration (DPA), in writing, prior to the fifteenth (15th) working day.

33030.27.2 Calculation of ATO Period

The ATO period shall commence when the Hiring Authority has obtained approval from his/her supervisor, and the employee has been effectively notified of his/her placement on ATO status. If an employee on ATO is to return to work, he/she shall be contacted and ordered to do so. There should be no confusion regarding either the expectation that the employee return to work or the reporting date and time. The Hiring Authority shall confirm the order in writing.

33030.27.3 ATO Notices and Employee Responsibilities

When placed on ATO, an employee shall be given a written notice that contains the following:

- The employee is still an employee of the Department and shall be available during the normal business hours of the Department (i.e., Monday through Friday, 8:00 a.m.

12:00 p.m. and 1:00 p.m. to 5:00 p.m.). The employee's lunch hour shall be from 12:00 p.m. to 1:00 p.m. Any state holidays observed during the work week shall be excepted.

- The employee shall be available by telephone.
- The employee may leave the immediate area to complete necessary errands (i.e., medical appointments or other necessary business that normally can only be completed during the business day). However, the employee must respond to the Department's attempt to contact him/her within a reasonable period of time. The reasonableness of the employee's response shall be determined by the type of errand, distance traveled and any other factors peculiar to the area which might affect the employee's ability to return the telephone call.
- The expectation is that, generally, the response time of the employee shall be less than two (2) hours.
- Emergency situations may affect this timeframe and are subject to Hiring Authority approval.

33030.27.4 State Property

When an employee is placed on ATO, the Hiring Authority shall require that the employee surrender all state-issued property including weapons, state identification, badge(s), keys, vests, and any other items related to employment.

33030.27.5 Peace Officer Authorization

If a peace officer is placed on ATO, the Hiring Authority may, based on the circumstances, rescind the peace officer authorization to carry a concealed weapon off duty. The rescission notice shall be in writing and given to the employee.

33030.28 Vertical Advocate's Preparation for the SPB Hearing

Upon notification from the SPB that an appeal has been filed, the ERO/Disciplinary Officer and/or the Vertical Advocate shall notify the Hiring Authority and shall prepare for the SPB Hearing. The Vertical Advocate shall represent the Department at SPB Hearings for all designated cases. In all cases presented by the Vertical Advocate, the ERO/Disciplinary Officer shall provide administrative support to the Vertical Advocate including, but not limited to, service of witness subpoenas.

The Vertical Advocate shall prepare for the SPB Hearing, including the following, as appropriate:

1. Prepare the defense by confirming:
 - a. Due process compliance, including notice, documentation, *Skelly* Hearing (if requested) and proper service.
 - b. Deadlines, statutes of limitations, and other critical time requirements.
2. Contact the appellant's representative to discuss relevant issues, including defenses, potential for settlement, etc.
3. Make discovery requests.

4. Respond to discovery requests.
5. Draft pre-hearing motions (e.g., motion to dismiss for failure to file a timely appeal).
6. Respond to pre-hearing motions.
7. Identify witnesses, including experts, and assess what testimony they can provide.
8. Request that the witnesses review any transcripts of their interviews to ensure their accuracy.
9. Contact the ERO/Disciplinary Officer for the issuance of subpoenas to witnesses and experts.
10. Interview witnesses, as necessary (i.e., if the Vertical Advocate has not participated in the investigative interview).
11. Select witnesses to testify.
12. Prepare witnesses in person, including the assigned investigator, for testimony at the SPB Hearing.
13. Visit the location of the incident leading to the disciplinary action.
14. Identify exhibits to be introduced at the SPB Hearing and request reproduction of the exhibits by the ERO/Disciplinary Officer.
15. Assess the current strengths and weaknesses of the Department's case, whether and how the weaknesses can be overcome, and develop a strategy for the case.
16. Assess the current strengths and weaknesses of the appellant's case, including what his or her defenses are likely to be and how to counter them. For example, consider the following:
 - a. What were the appellant's defenses during the *Skelly* Hearing?
 - b. Who did the appellant subpoena?
 - c. To what can the appellant's witnesses testify?
 - d. Other possible defenses, including:
 - i. Statute of limitations violations.
 - ii. No nexus between wrongful act and employment with the Department.
 - iii. No progressive discipline.
 - iv. The appellant is the subject of disparate treatment, retaliation, or discrimination.
 - v. The appellant previously has been disciplined for the same incident(s).
17. Prepare a hearing binder, including the following:
 - a. Exhibit list and a copy of each exhibit.
 - b. Witness list in the order in which they will testify.
 - c. List of witness contact numbers.
 - d. Opening Statement Outline.
 - e. Direct and cross-examination questions and, when appropriate, the anticipated answers.
 - f. Closing Argument Outline.
 - g. Applicable precedential decisions, statutes, regulations, etc.
18. Research potential legal issues.
19. Draft briefs, when necessary, utilizing and augmenting where appropriate the EAPT brief bank.
20. Communicate with the SAIG, for cases the BIR is monitoring, including whether the SAIG will attend the SPB Hearing.

21. Consult with the assigned SAIG regarding SPB Hearing strategy.

33030.28.1 Role of the Vertical Advocate at the SPB Hearing

At the SPB Hearing, the Vertical Advocate shall prosecute the adverse actions as follows:

1. Present the evidence through witness testimony, stipulating only when the facts are not in dispute and there is no possibility of weakening the case to be presented.
2. Within ethical limits, present evidence in the best light possible for the Department.
3. Challenge testimony presented by the appellant, including challenges to “expert” testimony by assessing the following:
 - a. If the witness is an “expert” as defined by statute and case law.
 - b. If the “expert’s” testimony is incompatible with his or her employment.
 - c. Whether the “expert’s” testimony should be challenged on the basis that it is irrelevant, calls for speculation, or calls for an opinion on the truth or falsity of certain statements.

If required by the SPB or the circumstances, the Vertical Advocate shall do the following:

1. Prepare a written closing argument;
2. Brief legal issues that arose during the SPB Hearing and require a decision. To ensure consistency in briefing, the Vertical Advocate shall review and update any briefs available in the EAPT brief bank;
3. Present briefing and oral argument to the members of the SPB.

Following the SPB Hearing, the Vertical Advocate shall do the following:

1. Maintain contact with the Hiring Authority until the case is closed;
2. Confer with the SAIG for cases the BIR is monitoring;
3. File a petition for rehearing, as appropriate;
4. When the SPB sustains the action or the merit appeal is denied, prepare the file for archiving as follows:
 - a. Organize the file so that information is readily available should the appellant petition for a rehearing or petition for a writ of mandate;
 - b. Close the file only after the petition for rehearing has been resolved or the 30-day filing period for the petition for rehearing has expired.
5. Consult with the Hiring Authority’s Personnel Office regarding all back pay issues, including the following:
 - a. Obtaining calculations of back pay due to the employee.
 - b. Challenging overpayments.
 - c. Defending the Department’s position at SPB back pay hearings.
6. Refer the case to the EAPT Appeals Committee when appropriate under the EAPT Post SPB Hearing Writs and Appeals Policy.

33030.28.2 Review of the SPB Decision

A committee comprised of the AGC, an EAPT Supervisor, and an attorney specializing in writs and appeals shall convene to review all SPB decisions that modified or revoked the adverse action. The assigned Vertical Advocate shall present the case to the EAPT Appeals Committee for discussion, and the BIR shall be invited to all committee

meetings. In cases presented to the SPB by contract counsel, a Vertical Advocate shall be assigned to present the case to the EAPT Appeals Committee.

The EAPT Appeals Committee shall do the following:

1. Meet monthly, unless there are no cases to consider. Additional meetings will be scheduled, as needed.
2. Notify the BIR regarding all committee meetings.
3. Determine whether to seek review of the SPB decision.
4. In making its decision to seek review of the SPB decisions, the committee will consider:
 - a. The recommendation of the Vertical Advocate assigned to the case and the SAIG, for cases the BIR is monitoring.
 - b. The likelihood of prevailing on appeal.
 - c. The egregiousness of the SPB's decision on legal or factual issues.
 - d. Whether the case has a potential collateral estoppel impact on other litigation.
 - e. Whether other departmental concerns are implicated.
 - f. The fiscal risks implicated in the pursuit of an appeal.
 - g. The potential precedential impact of the decision to appeal or not to appeal.
 - h. Unit workload and the availability of external resources.
 - i. Such other facts as may be present in the particular case under consideration.
4. Solicit and discuss strategies to shape the decisional law governing the SPB.
5. Identify legal and procedural issues encountered at administrative hearings (i.e., SPB, DPA, Unemployment Insurance Appeals Board, Workers' Compensation Appeals Board, etc.) that are in need of resolution.
6. The committee's decision to seek or not to seek permission to file a writ petition shall be communicated to the Hiring Authority and the CAIG for cases the BIR is monitoring. A decision to seek permission to file a writ petition requires that the communication include advice that the SPB decision being appealed is not final until the appeal has been resolved. Also, in appropriate cases, a stay shall be sought from the appellate court.

The assigned writs and appeals attorney is responsible for preparation of any Governor's Office Action Request (GOAR) and the writ petition. Workload considerations may require the Vertical Advocate to accept this responsibility, under the direction of the writs and appeals attorney.

1. The GOAR shall be prepared, and its circulation for approval commenced, within five (5) business days of the assignment.
2. When the GOAR is approved, the writs and appeals attorney (or assigned Vertical Advocate) shall, within fifteen (15) business days:
 - a. Order the SPB Hearing transcript.
 - b. Prepare and serve the petition for a writ.
3. As appropriate, at the time of the filing of the writ petition, the writs and appeals attorney (or assigned Vertical Advocate) will file an *ex parte* application for a stay of the SPB decision.
4. The writs and appeals attorney (or assigned Vertical Advocate), in consultation with the BIR attorney for cases the BIR is monitoring, shall prepare a memorandum to the

Hiring Authority, as soon as the matter is final (either by acquiescence to the decision, settlement, or completion of any appeal). The memorandum shall include specific guidance of what steps must be taken, if any, to satisfy the final decision or settlement.

33030.29 Testimony by Department Employees

Any employee of the Department who is contacted by any person regarding his/her potential testimony or who is subpoenaed as a witness in any matter shall notify, in writing and within one (1) business day of being contacted, the Litigation Coordinator and the ERO/Disciplinary Officer at his/her worksite. The employee also shall provide a copy of the subpoena to the Litigation Coordinator and the ERO/Disciplinary Officer immediately upon receipt.

The ERO/Disciplinary Officer shall maintain a log of these contacts and shall determine immediately whether there is a pending disciplinary matter for which this subpoena was issued. The ERO/Disciplinary Officer shall notify the employee of the requirements of California Code of Regulations, title 15, section 3413. If a disciplinary matter is pending, the ERO/Disciplinary Officer shall immediately send, via facsimile, a copy of the subpoena to the appropriate Vertical Advocate. The Litigation Coordinator shall determine immediately whether there is a civil or criminal action pending and shall notify and forward a copy of the subpoena to the assigned Deputy Attorney General or contract counsel and to the Office of Legal Affairs attorney monitoring the matter.

33030.30 Duress or Undue Influence

No one shall exert undue influence or subject employees to duress in order to obtain a resignation. Care must be taken to avoid making statements that could be the basis for an appeal by the employee to have a resignation set aside on grounds it was obtained by duress, undue influence, or excessive persuasion.

The following elements are characterized as excessive persuasion:

- Discussion of the resignation at an unusual or inappropriate time.
- Consummation of the resignation in an unusual place.
- Insistent demand that the transaction be completed at once.
- Extreme emphasis on unfavorable consequences of a delay.
- The use of multiple persuaders by the Department against the employee standing alone.
- Denial of the time or the opportunity for the employee to consult an advisor.

33030.31 EAPT Reporting

On a quarterly basis and commencing March 1, 2006, the EAPT shall prepare and submit to the appointing power a report that includes the following information:

- Number of adverse actions by type of discipline;
- Number of direct (without an investigation) adverse action by type;

- Number of adverse actions with an investigation by type;
- Number of actions where the discipline was sustained by the *Skelly* Officer;
- Number of actions where the *Skelly* Officer recommended modification of the discipline;
 - Number that the Hiring Authority accepted the recommendation.
 - Number that the Hiring Authority rejected the recommendation.
- Number of settlements reached prior to the SPB decision;
- SPB decisions;
 - Number of cases where SPB upheld the original discipline.
 - Number of cases where SPB modified the original discipline.
 - Number of cases where SPB revoked the discipline.

33030.32 Disciplinary Audits

The effectiveness of the Department's disciplinary process shall be reviewed in an annual audit prepared by the Office of Legal Affairs, in conjunction with the OIA. The audit shall assess the adequacy of the monitoring of the statute of limitations and shall assess training needs by evaluating the following: the effectiveness of each Vertical Advocate; the appropriateness and thoroughness of the investigation, report, penalty, Notice of Adverse Action, and settlement; and the policy issues involved and/or at stake.